

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THE OFFICIAL COMMITTEE OF	)	
UNSECURED CREDITORS OF	)	
ALLEGHENY HEALTH, EDUCATION	)	
AND RESEARCH FOUNDATION,	)	
	)	
Plaintiff,	)	Civil Action No. 00-684
	)	
v.	)	
	)	Judge David Stewart Cercone
PRICEWATERHOUSECOOPERS, LLP,	)	
	)	
Defendant.	)	

**APPENDIX TO THE COMMITTEE'S RESPONSE TO PwC'S STATEMENT OF  
UNDISPUTED AND MATERIAL FACTS UNDER LOCAL RULE 56.1(C)(1)**

**VOLUME 3**

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July 11, 2005

**Kaye Dep.**

**In The Matter Of:**

**AHERF v.  
PRICEWATERHOUSECOOPERS, L.L.P.,**

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**DONALD KAYE, M.D.**

*June 17, 2003*

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KAYE, M.D., DONALD



**LEGALINK**

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DONALD KAYE, M.D.,

<p style="text-align: right;">Page 98</p> <p>1 the West was paying for any expenses in 2 the East; it was the first time you 3 heard them described as a loan or as 4 support?</p> <p>5 A. It was an aberrant, as a differing 6 type of payment than what the normal 7 payments would have been, which would 8 have been on an ongoing basis because 9 certainly the West was responsible for 10 part of the operations of the medical 11 school.</p> <p>12 Q. Okay. And you indicated that the 13 board meeting where you heard these 14 payments or part of these payments 15 described as a loan occurred in December 16 of 1997?</p> <p>17 A. Thereabouts. I recall that there 18 was a question from Mr. Gumberg about 19 what it was, what it was for, and there 20 was discussion of -- indicating that it 21 was a loan and would be repaid.</p> <p>22 Q. Now, Dr. Kaye, is there something 23 about your recollection of that meeting 24 that causes you to place it in December 25 as opposed to some different month in</p>	<p style="text-align: right;">Page 100</p> <p>1 Kaye, of the issue of transfers in the 2 range of a hundred million dollars from 3 the West to the East coming up in an 4 October meeting held in the West, in 5 Pittsburgh?</p> <p>6 A. I have no recollection of that, 7 but it could have happened.</p> <p>8 Q. Now, Dr. Kaye, I'm going to go 9 into the area of your review of the 10 financial statements for the various 11 components of the AHERF organization and 12 what they may or may not have revealed 13 to you. And I start with the 14 acknowledgment that you've testified a 15 couple times here already that you don't 16 have a financial background. But let's 17 start with the Eastern hospitals for 18 which you were acting as president or 19 CEO at various times during the 1990s.</p> <p>20 Did you ever have occasion to 21 review monthly, quarterly, annual 22 financial statements with respect to 23 those entities?</p> <p>24 A. Yes. I reviewed, or at least I 25 saw the financial statements on a</p>
<p style="text-align: right;">Page 99</p> <p>1 1997?</p> <p>2 A. No. It just -- I recall it was 3 toward the end of '97. I've been 4 through many of these questions many 5 times before, and so I basically have 6 come up with certain time frames for 7 certain things. And I said December or 8 thereabouts.</p> <p>9 Q. Okay.</p> <p>10 A. I mean, it could have been in 11 November, but I think it was in 12 December.</p> <p>13 Q. Do you recall which organization 14 was having the meeting that you referred 15 to during which this concept of a loan 16 was raised by Mr. Gumberg?</p> <p>17 A. No, I don't, but it was one of the 18 Eastern boards. It could have been the 19 medical school board; it could have been 20 the hospital board. If I had to guess, 21 and I've been told not to guess, but 22 since I'm prefacing it by saying it's a 23 guess, I would say it was a medical 24 school board.</p> <p>25 Q. Do you have any recollection, Dr.</p>	<p style="text-align: right;">Page 101</p> <p>1 monthly basis, and on an annual basis 2 always really with Chuck Morrison 3 explaining to me what was there and what 4 it meant. And when we started having 5 problems was when he couldn't explain to 6 me what was there and why it was there 7 or why numbers would change when we had 8 no reason in terms of the numbers of 9 admissions and numbers of patient days 10 and things like that for it to be 11 changing.</p> <p>12 I depended heavily on Chuck 13 because he was the finance person. I 14 thought and I think very highly of him 15 in terms of competence, honesty, and so 16 on. And so, yeah, he would explain to 17 me.</p> <p>18 I spent my time really with 19 the revenue and the expense statements, 20 and really did not pay much attention 21 because I never really understood them 22 well, or maybe I should say even at all, 23 the cash flow statements.</p> <p>24 Q. You indicated in your answer that 25 you reviewed or at least you saw monthly</p>

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<p>1 statements.</p> <p>2 A. I reviewed them.</p> <p>3 Q. Okay. And what do you recall</p> <p>4 would constitute your review? What</p> <p>5 would it entail on your part?</p> <p>6 A. I'd look at the revenue, I'd look</p> <p>7 at the expenses, I'd look at the</p> <p>8 components of the revenue and the</p> <p>9 components of the expenses and then see</p> <p>10 what the bottom line was, by hospital</p> <p>11 and by system.</p> <p>12 Q. And after you reviewed that</p> <p>13 information, were there occasions where</p> <p>14 you did something about it or was this</p> <p>15 informational, from your standpoint, in</p> <p>16 terms of understanding what had been</p> <p>17 reported?</p> <p>18 A. This was primarily informational,</p> <p>19 and as long as the bottom lines were</p> <p>20 positive, that is, that the -- taking</p> <p>21 the bottom line plus depreciation into</p> <p>22 account was positive, I would be</p> <p>23 somewhat reassured.</p> <p>24 And when those figures were</p> <p>25 negative, I would be concerned and try</p>	<p>Page 102</p> <p>1 A. It occurred in July of 1997 with</p> <p>2 me seeing it probably -- obviously after</p> <p>3 the end of July, but mid-August, end of</p> <p>4 August.</p> <p>5 Q. Were these changes to negative</p> <p>6 bottom lines attributable to the changed</p> <p>7 environment that you testified to</p> <p>8 earlier, or were there other reasons you</p> <p>9 recall for that?</p> <p>10 MR. WHITNEY: Objection.</p> <p>11 Foundation.</p> <p>12 THE WITNESS: I had great</p> <p>13 difficulty in understanding precisely</p> <p>14 why it had happened. Some of it was</p> <p>15 clearly change in environment because we</p> <p>16 didn't know as of the beginning of July</p> <p>17 just exactly what the Medicare changes</p> <p>18 were going to be, because they weren't</p> <p>19 going to occur until, I think, October,</p> <p>20 so that there was a -- basically a</p> <p>21 accounting for negative changes because</p> <p>22 that's what we thought was going to</p> <p>23 happen. We didn't know.</p> <p>24 And the revenue just went to</p> <p>25 pot. And that's when we really started</p>
<p>1 to find out why they were negative,</p> <p>2 whether it was lack of revenue or</p> <p>3 whether our expenses had suddenly jumped</p> <p>4 somewhere over what had been budgeted,</p> <p>5 and try to take action to correct</p> <p>6 whichever it was.</p> <p>7 Q. Dr. Kaye, is it fair to say that</p> <p>8 throughout the entire 1990s there were</p> <p>9 often occasions where at least some of</p> <p>10 the hospitals within the East were</p> <p>11 negative in terms of revenues not</p> <p>12 exceeding the operating expenses and</p> <p>13 depreciation?</p> <p>14 A. Yes. There were times, and it was</p> <p>15 primarily with the smaller hospitals and</p> <p>16 the less important hospitals with the</p> <p>17 bigger hospitals basically having bottom</p> <p>18 lines that were able to carry or</p> <p>19 compensate for the smaller hospitals.</p> <p>20 Q. And did there come a time when</p> <p>21 even the bigger hospitals turned</p> <p>22 negative?</p> <p>23 A. Yes, there was.</p> <p>24 Q. And when did that occur,</p> <p>25 approximately?</p>	<p>Page 103</p> <p>1 to try to find out what was going on in</p> <p>2 Pittsburgh, which was doing the billing.</p> <p>3 When the July figures came in, the</p> <p>4 middle or end of August, Mr. Abdelhak</p> <p>5 had just had surgery done and I flew out</p> <p>6 there to show him because I was very</p> <p>7 concerned. His answer was, "Well, July</p> <p>8 is often a difficult month to</p> <p>9 interpret," and so on. "So don't worry</p> <p>10 about it. Wait until you see the August</p> <p>11 figures."</p> <p>12 Well, when the August figures</p> <p>13 came in, they were equally bad, and that</p> <p>14 was about the middle of September.</p> <p>15 BY MR. McDONOUGH:</p> <p>16 Q. Okay. Now, you indicated in your</p> <p>17 review of the financial statements that</p> <p>18 you would have the statements or various</p> <p>19 entries thereon explained to you by</p> <p>20 Chuck Morrison.</p> <p>21 A. As best he could.</p> <p>22 Q. As best he could. And you</p> <p>23 indicated that when you had problems was</p> <p>24 when he couldn't explain them. When do</p> <p>25 you recall the first time this began to</p>

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<p style="text-align: right;">Page 278</p> <p>1 that would be good.      2 MR. WHITNEY: Or we may      3 decide, if he's -- if Joe is windy and      4 goes as he did today until 1:00. And      5 all, we may decide we need to take that      6 break. But I'd like to avoid that.      7 MR. ISTVAN: Okay.      8 MR. McDONOUGH: That's what I      9 get for letting you choose when to have      10 the lunch break.      11 THE VIDEOGRAPHER: Off the      12 video --      13 MR. ISTVAN: Well, I just was      14 hoping somebody other than me would be      15 the one who wussed out. But, I mean, if      16 nobody else is going to wuss out, I'll      17 step up to the plate. I mean, I'll      18 wuss.      19 MR. McDONOUGH: Okay. So we      20 start at 9:00 tomorrow?      21 MR. ISTVAN: Fair enough.      22 MR. McDONOUGH: Okay. Thank      23 you.      24 THE VIDEOGRAPHER: This is      25 the end of tape number four. The time</p>	<p style="text-align: left;">Page 280</p> <p>1 WITNESS CERTIFICATION      2      3 I hereby certify that I have      4 read the foregoing transcript of my      5 deposition testimony, and that my      6 answers to the questions propounded,      7 with the attached corrections or      8 changes, if any, are true and correct.      9      10      11 DATE <u>DONALD KAYE, M.D.</u>      12      13      14      15      16 PRINTED NAME      17      18      19      20      21      22      23      24      25</p>
<p>1 is 7:20.      2 MR. McDONOUGH: 5:20.      3 (The deposition adjourned at      4 5:20 p.m.)      5      6      7      8      9      10      11      12      13      14      15      16      17      18      19      20      21      22      23      24      25</p>	

**Kennedy Dep.**

VIDEOTAPED DEPOSITION OF WILLIAM C. KENNEDY  
CONDUCTED ON THURSDAY, AUGUST 15, 2002

Page 1

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 \_\_\_\_\_  
4 THE OFFICIAL COMMITTEE OF UNSECURED )  
5 CREDITORS OF ALLEGHENY HEALTH, )  
6 EDUCATION AND RESEARCH FOUNDATION, )  
7 Plaintiff,) CIVIL ACTION  
8 v. ) NO. 00-684  
9 PRICEWATERHOUSECOOPERS, LLP, )  
10 Defendant.)  
11 \_\_\_\_\_

12 Videotaped Deposition of WILLIAM C. KENNEDY

13 Charlottesville, Virginia

14 Thursday, August 15, 2002

15 9:00 a.m.

16 Pages 1 - 274

17 Reported by: Karen L. Hart, RMR-CRR

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VIDEOTAPED DEPOSITION OF WILLIAM C. KENNEDY  
CONDUCTED ON THURSDAY, AUGUST 15, 2002

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1 WILLIAM C. KENNEDY  
 2 Mike ever calling me asking me questions about what I 15:57:55  
 3 might have meant or not meant. And I -- Mike and I 15:57:58  
 4 worked very well together, so I -- you know, I 15:58:03  
 5 just -- if I were involved in a call with Mike, I 15:58:06  
 6 would remember it, and I just -- I don't remember 15:58:13  
 7 one. 15:58:16

8 Q. Okay. Is it your opinion that any realized 15:58:24  
 9 or unrealized gains that were had on the Lockhart 15:58:33  
 10 fund -- and I'm referring specifically to the three 15:58:37  
 11 accounts that are actually titled Lockhart and have 15:58:40  
 12 all the same language in the case of a security, that 15:58:43  
 13 language -- is it your belief that any gain on that 15:58:50  
 14 sale or any value appreciation on those funds other 15:58:55  
 15 than unspent income is part of principal? 15:59:01

16 MR. RYAN: Objection. 15:59:08  
 17 THE WITNESS: I think any monies that are 15:59:09  
 18 made on the sale of the securities would be 15:59:10  
 19 considered a premium or profit and that would be 15:59:14  
 20 corpus. If you're getting a dividend -- you're 15:59:17  
 21 holding on to the stock and you're receiving 15:59:23  
 22 dividends, it would seem to me that in that instance 15:59:25  
 23 you're probably talking about income. 15:59:29  
 24 BY MR. TORBORG: 15:59:33  
 25 Q. Okay. Now, when you -- you said that you 15:59:33

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1 WILLIAM C. KENNEDY  
 2 This goes back to the question of there not 16:00:49  
 3 being a provision in the document for the use of 16:00:51  
 4 principal. 16:00:53  
 5 MR. TORBORG: Well -- 16:00:55  
 6 THE WITNESS: And whether this -- we just 16:00:56  
 7 got done talking about premiums being income as 16:00:57  
 8 opposed to being principal. So not having the 16:01:00  
 9 language in front of me, is it fair for me to 16:01:08  
 10 conclude that realized or unrealized gains could be 16:01:10  
 11 used is the question? 16:01:13  
 12 BY MR. TORBORG: 16:01:15  
 13 Q. If the -- let me ask it a different way: 16:01:17  
 14 If there were language in the trust agreement that 16:01:19  
 15 said principal is permanently restricted or corpus is 16:01:22  
 16 permanently restricted -- 16:01:25  
 17 A. Uh-huh. 16:01:31  
 18 Q. -- would you need the Barbara Robinson 16:01:31  
 19 letter to determine the availability of capital 16:01:32  
 20 appreciation on the trust? 16:01:37  
 21 MR. RYAN: Objection. 16:01:37  
 22 THE WITNESS: I think I would, but I 16:01:44  
 23 respect that someone that's much more knowledgeable 16:01:45  
 24 with regard to the way trusts function and work and 16:01:48  
 25 perhaps who are more familiar with the specific -- 16:01:54

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1 WILLIAM C. KENNEDY  
 2 weren't concentrating on Barbara Robinson's first two 15:59:38  
 3 paragraphs when you looked at this? 15:59:41  
 4 A. Right. 15:59:43  
 5 Q. You were simply looking at the language 15:59:43  
 6 itself? 15:59:44  
 7 A. Yes. 15:59:45  
 8 Q. Were you able to make the determination you 15:59:46  
 9 just made for me without looking at her first two 15:59:48  
 10 paragraphs? 15:59:53  
 11 MR. RYAN: Objection. 15:59:56  
 12 THE WITNESS: I hadn't thought of it that 15:59:56  
 13 way. I was really responding specifically to the 15:59:58  
 14 questions that you've posed and trying to clarify my 16:00:02  
 15 answer. 16:00:07  
 16 BY MR. TORBORG: 16:00:12  
 17 Q. My question is simply this. 16:00:12  
 18 A. Reading the language, yeah. 16:00:15  
 19 Q. Do you need this letter to determine 16:00:15  
 20 whether or not any gains on the sale that are not 16:00:17  
 21 attributable to interest income or dividend income 16:00:22  
 22 are permanently restricted and part of principal? 16:00:25  
 23 MR. RYAN: Objection. 16:00:29  
 24 THE WITNESS: That's an interesting 16:00:32  
 25 question. 16:00:33

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1 WILLIAM C. KENNEDY  
 2 even these specific instruments might not have needed 16:01:58  
 3 it. I think that my approach to this would be to go 16:02:03  
 4 back to the document, even if I had a gut feeling one 16:02:07  
 5 way or the other. 16:02:11  
 6 BY MR. TORBORG: 16:02:12  
 7 Q. But you would rely on that underlying 16:02:12  
 8 document? 16:02:14  
 9 MR. RYAN: Objection. 16:02:15  
 10 THE WITNESS: I would rely on the 16:02:15  
 11 underlying document. 16:02:16  
 12 MR. TORBORG: Okay. I think we can put 16:02:23  
 13 this aside. 16:02:23  
 14 THE WITNESS: Good. 16:02:25  
 15 BY MR. TORBORG: 16:02:25  
 16 Q. You talked earlier about a severance 16:02:28  
 17 agreement that you prepared for Carol Calvert. 16:02:34  
 18 A. Yes. 16:02:36  
 19 Q. What do you remember about the 16:02:38  
 20 circumstances leading to that severance agreement? 16:02:40  
 21 A. I was told that she was being let go by 16:02:51  
 22 David McConnell. My conversations were all with 16:02:56  
 23 David, not with Mr. Abdelhak. David came to me -- 16:03:00  
 24 and again, this is at a time Nancy's not there -- we 16:03:07  
 25 need a severance agreement for Carol, basically what 16:03:11